

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 2001 Session

DIANE CRAWFORD v. CROTTY-TENN, INC.

**Direct Appeal from the Chancery Court for Jackson County
No. 97-36, Hon. C. K. Smith, Judge**

**No. M2001-00715-WC-R3-CV - Mailed - October 15, 2001
Filed - November 19, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer in this case had two insurance carriers. The employer had one insurer at the time the employee first reported her gradual injury and temporarily left work due to her carpal tunnel syndrome. The employer then changed insurance carriers and the second insurer's coverage extended through the time the employee continued to work and permanently ended her employment. The trial court held the first insurer liable for permanent partial disability benefits due to the fact that the employee's first report of work injury constituted a definite date at which the employee knew the nature and the cause of her injury. The first insurer appeals and argues that the second insurer should be liable because the employee continued to work during the second insurer's coverage. As discussed below, the Panel affirms the result of the trial court, but on different grounds.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Affirmed.

GAYDEN, Sp. J. delivered the opinion of the court, in which Drowota, J., and Loser, Sp. J., joined.

Hal W. Wilkins, Leitner, Williams, Dooley & Napolitan, Nashville, TN for the defendant-appellant Crotty-Tenn, Inc. (AIG).

Robert R. Davies, Davies, Humphreys & Evans, Nashville, TN for the defendant-appellee Crotty-Tenn, Inc. (EBI).

William E. Halfacre, III, Madewell, Jared, Halfacre & Williams, Cookeville, TN for the plaintiff-appellee Diane Crawford.

MEMORANDUM OPINION

On January 2, 1995, the employee/appellee Diane Crawford began to work as a riveter for Crotty-Tenn, Inc.. As a riveter, Ms. Crawford held boards together while forcing metal clips through them to make automotive sun-visors. Her job involved continuous gripping and squeezing with her hands.

In the summer of 1996, Ms. Crawford began to feel pain and numbness in her wrists and hands radiating up her arms and into her shoulders and neck. On August 7, 1996, Ms. Crawford's symptoms worsened to the point at which she was forced to seek medical treatment. Ms. Crawford filed a first report of work injury with Crotty-Tenn and saw Dr. Nancy Blevins, who prescribed medication for Ms. Crawford and suspended her from work for six weeks. AIG, the defendant-appellant in this action and Crotty-Tenn's workers' compensation carrier at the time, paid for Ms. Crawford's temporary total disability benefits.

After her six weeks of leave, Ms. Crawford returned to work. Ms. Crawford subsequently saw Dr. Anthony Carter and Dr. Sam Barnes in November and December of 1996 and Dr. Jim Talmage in June of 1997. Ms. Crawford was moved to a light-duty job in November of 1996. Ms. Crawford also saw various other doctors regarding her injury including Dr. David Gaw. Ms. Crawford reported feeling increasing pain and was placed on permanent restrictions. Dr. Talmage stated that the most effective treatment would be for Ms. Crawford to change vocations. However, Ms. Crawford did not stop her work due to her injury until she left her employment with Crotty-Tenn two years later in 1998.

On April 1, 1997, Crotty-Tenn changed its workers' compensation carrier from AIG to EBI. On August 26, 1998, after Crotty-Tenn lost a major contract, Ms. Crawford volunteered to be laid off due in part to her injury and has not since returned to work at Crotty-Tenn.

On May 4, 2000, Dr. Gaw testified that the additional squeezing and gripping from her continued work after 1996 could have aggravated Ms. Crawford's injury based on an independent medical evaluation that he performed on Ms. Crawford on April 14, 1998. However, Dr. Gaw could not testify that Ms. Crawford experienced an anatomical change from her continued work.

The trial court found the defendant/appellant AIG, the employer's first insurer, liable for benefits to Ms. Crawford because Ms. Crawford had filed her first report of injury during its coverage. The trial court stated that when the employee knew the nature and cause of the injury on a definite date, the liability of an insurance carrier would depend on that date. The trial court awarded Ms. Crawford permanent partial disability benefits in the amount of \$22,080.96 based on a vocational disability rating of 36% to the body as a whole.

Review on appeal is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence

is otherwise. See Tenn. Code Ann. § 50-6-225(e)(2). The rule governing the liability of insurance carriers in gradual injury cases is established in Barker. See Barker v. Home-Crest Corp., 805 S.W.2d 373, 376 (Tenn. 1991). Barker states that insurance liability attaches on the day that the employee first leaves work, temporarily or permanently, due to a gradual injury. Id. at 376.

AIG argues that the employer's second insurer, the defendant/appellee EBI, is liable because Ms. Crawford's injury was aggravated during EBI's coverage as she continued to work for her employer. However, under Barker, the insurer at the time of the employee's first absence from work is liable for benefits regardless of the aggravation of the injury or the continued work of the employee. Id. at 375-6. The record states that Ms. Crawford first missed work due to her injury for six weeks in 1996. Under Barker, the date of Ms. Crawford's first absence from work due to her injury is the date of liability, not the date at which she knew the nature and cause of her injury. Id. AIG provided insurance coverage for Crotty-Tenn on the date of her absence through April 1, 1997. Consequently, AIG, not EBI, is liable to Ms. Crawford for her disability payments.

We affirm the result of the trial court but not the reasoning. AIG remains liable to Ms. Crawford for her disability benefits. Costs of appeal are taxed to the appellant AIG.

HAMILTON V.GAYDEN, JR., JUDGE

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, AIG, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM